

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Nanda Vs. State of Raj.
(D.B. Criminal Jail Appeal No.373/2003)

D. B. Criminal Jail Appeal under Sec.374 (2) Cr.P.C.
against the judgment dated 14-2-2003 in Sessions Case
No.160/2001 passed by Shri Kailash Chand Meena,
RHJS, Additional Sessions Judge (Fast Track) No.2,
Bundi.

Date of Judgment:

April 02, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Ms. Priyanka Pareek, Amicus Curiae, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

The appellant seeks to set aside the judgment dated February 14, 2003 of the learned Additional Sessions Judge (Fast Track) No.2, Bundi whereby appellant was convicted and sentenced under section 302 IPC to suffer imprisonment for life and fine of Rs.1000/-.

2. There was no bad blood between Ratna (since deceased) and the appellant. They were neighbours and their mutual relations were cordial. However on February 25, 1987 around 8 AM the appellant and Ratna had altercations and the appellant inflicted knife blows on the person of Ratna as a result of which he died. Sukhdev, father in law of deceased, lodged the report of the incident at Police Station Talera on February 26, 1987 where

case under section 302 IPC was registered and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2 Bundi. Charge under sections 302 IPC was framed against the accused, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 8 witnesses. In the explanation under Sec.313 Cr.P.C., the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard learned Amicus Curiae as well as learned Public Prosecutor and with their assistance perused the material on record.

4. Death of Ratna was homicidal in nature. Vide Post Mortem Report (Ex.P-1) following ante mortem injuries were found on dead body:-

1. Punctured wound with sharp edged (Stab wound) 1" x 1" x entering into the abdominal cavity on the left side.
2. Punctured wound 1" x 1" entering into the Abdominal cavity on the left renal region.
3. Abrasion 2½" x ¼" on the Rt. middle of Rt.scapular region.

According to Dr. Darshan Singh (Pw.1) the cause of death was injury to internal organs i.e.spleen & kidney leading to hemorrhage shock.

5. The prosecution case is rested on the testimony of Mangi Bai (Pw.6), wife of the deceased. In her deposition Mangi Bai stated as under:-

"...हम दोनों पति पत्नी मकान के बाहर चबूतरे पर बैठकर बातें कर रहे थे। इतने में नन्दा वहां आया व गाली देने लगा... मैंने कहा कि तू हमारे ऊपर कर्जा थोड़े ही मांगता है जो हमारे में गाली निकाल रहा है। इतने में नन्दा ने मेरे धक्का मारा तो मैं नीचे गिर गई। मेरे पति ने कहा कि तू मेरी औरत को धक्का क्यों दे रहा है। इस पर नन्दा ने मेरे पति के

हाथ की मारी। पहले तो नन्दा ने मेरे पति के थप्पड़ की मारी फिर मैं उसके साथ बाथमबूथा हुई तब नन्दा ने अपने बोथे में से चाकू निकालकर मेरे पति के पेट के बगल में और एक बाएँ कूल्हे पर और एक कन्धे पर मारी।"

In the cross examination Mangi Bai deposed as under:-

"यह बात सही है कि नन्दा से हमारे पहले से बोलचाल थी। हमारे पहले से कोई झगडा नहीं था। उस रोज नन्दा किसी और में गाली निकाल रहा था तब मैंने उससे कहा कि हमारे यहां पर गालियां मत निकाल, उसमें गालियां निकालनी हो तो उसमें जाकर निकाल। इसी बात पर उसने मेरे को धक्का दे दिया।"

6. Factual situation that emerges from the evidence of Mangi Bai may be summarized thus:-

- (i) There was no ill will between the appellant and the deceased.
- (ii) The incident occurred all of a sudden.
- (iii) The appellant did not hurl abuses at Mangi Bai or the deceased. While the appellant was abusing someone else, it was Mangi Bai who provoked the appellant and had a scuffle with him.
- (iv) The appellant had no intention to kill the deceased. Initially the appellant gave a slap to the deceased.
- (v) Injuries No.1 and 2 sustained by the deceased on the left side of abdominal cavity and injury NO.3 was abrasion. Thus possibility that the appellant had dealt with single blow on the abdomen of the deceased cannot be ruled out.

7. In such a situation at best the case can be one where the

appellant might be said to have caused a bodily injury as is likely to cause death and he can be convicted under section 304 Part I. Therefore, there is every justification to alter the conviction recorded under section 302 into one Section 304 Part I IPC. On the facts and circumstances of the case, the imposition of 10 years rigorous imprisonment and fine would sufficiently meet the requirements of justice and to this extent the judgment of the court below shall stand altered and modified.

8. For For these reasons, we partly allow the appeal and instead of section 302 we convict the appellant Nanda under section 304 part I IPC and sentence him to suffer rigorous imprisonment for ten years and fine of Rs.1000/-, in default to further suffer three months rigorous imprisonment.

The impugned judgment stands modified as indicated above.

(Guman Singh),J.

(Shiv Kumar Sharma)J.

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